

REMARKS

This Application has been carefully reviewed in light of the Official Action mailed October 17, 2006. Claims 1-14 and 25 are pending in this Application. In order to advance prosecution of this Application, Claim 1 has been amended. Applicant respectfully requests reconsideration and favorable action in this Application.

Claim 1 stands objected to for a minor informality. Claim 1 has been amended to address the informality identified by the Examiner.

Claims 1, 6-9, 11, and 12 stand rejected under 35 U.S.C. §102(b) as being anticipated by Dury. Independent Claim 1 recites ". . . wherein the surface carpet layer overlays the textile layer, the textile layer overlays such random pile layer, and the layer of stratified fibrous material is overlain by the at least one random pile layer." By contrast, FIGURE 1 of the Dury patent shows a three layer surface over a substrate surface with substantially vertical fibres extending from a base layer through the other two layers. FIGURE 2 of the Dury patent shows a two layer surface over a substrate surface with fibres extending from a base layer through and above the second layer. FIGURE 3 of the Dury patent shows a three layer surface over a substrate surface with fibres extending from a base layer into the second layer. FIGURES 4 and 5 show a two layer surface over a substrate surface with fibres extending from a base layer and natural vegetation extending through the two layer surface. Thus, none of FIGURES 1-5 of the Dury patent show a four layer surface as provided by the claimed invention. Therefore, Applicant respectfully submits that Claims 1, 6-9, 11, and 12 are not anticipated by the Dury patent.

Claims 2 and 10 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Dury. Independent Claim 1, from which Claims 2 and 10 depend, has been shown above to be patentably distinct from the Dury patent. Therefore, Applicant respectfully submits that Claims 2 and 10 are patentably distinct from the Dury patent.

Applicant notes with appreciation the allowance of Claims 13, 14, and 25.

Applicant notes with appreciation the allowability of Claims 3-5 if placed into appropriate independent form. Applicant respectfully defers placing Claims 3-5 in independent form pending a final disposition of Independent Claim 1.

CONCLUSION

Applicant has made an earnest attempt to place this case in condition for allowance. For at least the foregoing reasons and other reasons clearly apparent, Applicant respectfully requests full allowance of all pending claims.

The Commissioner is hereby authorized to charge any fees or credit any overpayments associated with this Application to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.

Attorneys for Applicant

A handwritten signature in black ink, appearing to read 'Charles S. Fish', is written over a horizontal line.

Charles S. Fish

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